

MORGANTOWN BOARD OF ZONING APPEALS

MINUTES

July 18, 2007 6:30 PM

City Council Chambers

Due to technical difficulties, no audio record is available for this meeting. The minutes submitted herein rely wholly on staff notes.

Members Present: Bernie Bossio, Mark Furfari, and Jim Shaffer

Members Absent: Nick Iannone

Staff Present: Christopher Fletcher, AICP, Planning Director

MATTERS OF BUSINESS:

- A. Minutes for May 16 were approved as submitted. June 25th minutes were not available for review and postponed until August.

OLD BUSINESS:

- A. **CU07 / Darr / 236 Cobun Avenue:** Request by Margaret Darr for conditional use approval of a "Bed and Breakfast Inn" use in an R-1A District for property located at 236 Cobun Avenue. Tax Map #29 Parcels #372-373; an R-1A, Single-family Residential District.

Fletcher read the background and analysis detailed in the Staff Report and described applicant's conditional use petition for a Bed & Breakfast Inn.

Due to technical difficulties, no audio record is available for this meeting. Margaret Darr made a presentation and public comments in support and in opposition were made. The Board directed questions to the applicant and staff and discussed the merits of the petition.

Findings of Fact #1: Shaffer motion in the negative; Bossio 2nd; negative motion passed 2-1 with Furfari voting against.

Findings of Fact #2: Shaffer motion in the positive; Furfari 2nd; motion passed unanimously.

Findings of Fact #3: Shaffer motion in the positive; Furfari 2nd; motion passed unanimously.

Findings of Fact #4: Shaffer motion in the positive; Furfari 2nd; motion passed unanimously.

Findings of Fact #5: Furfari motion in the positive; Shaffer 2nd; motion passed unanimously.

Findings of Fact #6: Shaffer motion in the positive; Furfari 2nd; motion passed unanimously.

Findings of Fact #7: Furfari motion in the positive; Furfari motion withdrawn; Shaffer motion in the negative; Bossio 2nd; motion passed 2-1 with Furfari voting against.

Findings of Fact #8: Shaffer motion in the negative; Bossio 2nd; motion passed 2-1 with Furfari voting against.

Shaffer motion to deny the conditional use approval petition because the Board of Zoning Appeals failed to reach a positive determination for each of the eight (8) Findings of Fact; Furfari 2nd; motion passed unanimously.

Shaffer moved that the Board's Findings of Fact for #1 was, "Congestion in the streets will be increased in that the minimum number of parking spaces required for the proposed "Bed & Breakfast Inn" use does not appear to be adequately provided as:

- i. Evidenced by an executed contract or agreement with the owner of the property on which the existing Domino's Pizza is situated.
- ii. Evidenced by a site plan that illustrates a sufficient number of parking spaces on the adjacent parcel, which the applicant currently owns. Access to the subject area for purposes of providing off-street parking appears to result in reducing the number of on-street parking spaces available to surrounding properties by permit. The Board concurs with Staff's opinion that two on-street parking permits, of which the applicant purports to have obtained from the City, do not adequately satisfy the Planning & Zoning Code's provision and intent of maintaining off-street parking."

Bossio 2nd; motion passed 2-1 with Furfari voting against.

Shaffer moved that the Board's FOF for #7 was, "The value of buildings will not be conserved in that it appears that a "Bed & Breakfast Inn" use may have a higher potential of adversely impacting the value of surrounding building than conserving existing values."

Furfari 2nd; motion passed unanimously.

Shaffer moved that the Board's FOF for #8 was, "The most appropriate use of land is not encouraged in that a "Bed & Breakfast Inn" use at the subject location does not appear to appropriately fit nor is in harmony with the general character and normal activities of the predominantly residential neighborhood."

Furfari 2nd; motion passed unanimously.

B. V07-11 / West Virginia University Alumni Association: Request by the West Virginia University Alumni Association for variance approval under the Planning and Zoning Code 1365.04 (G) to exceed the maximum parking requirement. Tax Map #6 Parcel #74 (the portion of realty affected by the proposed zoning map amendment is illustrated on Tax Map 11).

Fletcher noted that the variance petition was withdrawn by the applicant as the property is owned and used by West Virginia University, which is exempt from the City's Planning & Zoning Code under State Code 8A-10-4.

NEW BUSINESS:

- A. **CU07-09 / Babilonia / 357-361 High Street**: Request by Edgardo Babilonia for conditional use approval of a "Restaurant private club" use in the B-4 District at 357-361 High Street. Tax Map #26A Parcel #98; a B-4, General Business District.

Fletcher read the staff report. He stated that Mr. Edgardo Babilonia seeks to open a "Restaurant, Private Club" use called *Bab's Italian Grill* in the former location of DeVincent's Music at 357-361 High Street.

Due to technical difficulties, no audio record is available for this meeting. Mr. Babilonia was represented by his son and made a presentation and public comments in support and in opposition were made. The Board directed questions to the applicant and staff and discussed the merits of the petition.

Shaffer moved to find in the affirmative for all the Findings of Fact's as submitted by the petitioner; Furfari 2nd; motion passed unanimously.

Shaffer moved to approve the conditional use petition as requested with the following conditions recommended by Staff:

- i. That the petitioner shall maintain compliance with all supplemental regulations set forth in Article 1331.06 (27) of the Planning and Zoning Code. That the establishment shall not serve liquor, including wine, later than 1:00 a.m., except on New Year's Eve.
- ii. That the applicant must obtain permits as a "restaurant" from the Monongalia County Health Department under the *Monongalia County Clean Indoor Air Regulations*.
- iii. That the basement or any other interior portion of the subject building that is not illustrated in the petitioner's preliminary drawing submitted with the conditional use application documents shall not be used by the subject establishment for any purpose without first obtaining approval by the Board.
- iv. That the currently contemplated outdoor area to the rear of the building shall not be created, improved or otherwise used by the subject establishment until the improvements of such area are reviewed and approved by the Downtown Design Review Committee and the Planning Director. That said area shall meet or exceed all related building and fire codes prior to use thereof. That potential seating in such area shall not be used in calculating minimum seating requirements as set forth in Article 1331.06 (27) (f) of the Planning and Zoning Code.
- v. That any exterior building modifications shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.

- vi. That any regulated signage shall be reviewed and approved by the Downtown Design Review Committee and the Planning Director prior to building permit issuance for same.
- vii. That the conditional use approval granted herein may not be transferred.

Furfari 2nd; motion passed unanimously.

- B. V07-17 / Martin's Memorabilia / 1233 University Avenue:** Request by Martin's Memorabilia for variance relief from Article 1369.07 of the Planning and Zoning Code, *Conditions for Permitted Signs*, as it relates to maximum sign size in the B-4 District at 1233 University Avenue. Tax Map #26A Parcel #129, a B-4, General Business District.

Fletcher read the staff report. He stated that Lauri and Mike Martin, owners of Martin's Memorabilia, seek to keep a sixteen (16) square foot sign that they erected without permits on the north façade at 1233 University Avenue.

Due to technical difficulties, no audio record is available for this meeting. Mr. Martin made a presentation and no public comments either in support or in opposition were provided. The Board directed questions to the applicant and staff and discussed the merits of the petition.

Shaffer moved to find in the affirmative for all the Findings of Fact's as submitted by the petitioner with Staff recommended additions; Furfari 2nd; motion passed unanimously.

Shaffer moved to grant a 22-foot variance from the maximum sign area in the B-4 District with the following conditions as recommended by Staff:

- i. That one sign may be erected on the north side façade and one sign may be erected on the front façade facing University Avenue;
- ii. That the combined area of both signs shall be less than 32 square feet;
- iii. That both signs include a border as recommended by the Design Review Committee;
- iv. That the copy on both signs is restricted to the name and logo of the business; and,
- v. That no additional permanent signage for the subject establishment may be erected at this location.

Furfari 2nd; motion passed unanimously.

- C. V07-18 / Metro Properties (City Gardens) / North Willey Street:** Request by Metro Properties (City Gardens) for variance relief from Article 1347.01 of the Planning and Zoning Code as it relates to the minimum rear setbacks in the B-2 District at property located at North Willey Street. Tax Map #01-21 Parcels #73.01-73.02; B-2, a Service-Business District.

Fletcher read the background and analysis detailed in the Staff Report and described applicant's variance petitions. Fletcher noted that each variance must be review and approved by the Board separately.

Due to technical difficulties, no audio record is available for this meeting. Mr. Scott Krabill, representing the petitioner, made a presentation and no public comments either in support or in opposition were made. The Board directed questions to the applicant and staff and discussed the merits of the related variance petitions.

Shaffer moved to find in the affirmative for all the Findings of Fact's as submitted by the petitioner; Furfari 2nd; motion passed unanimously.

Furfari moved to grant an eight-foot rear setback variance for the west building and a twelve-foot rear setback variance for the east building as requested with the following conditions recommended by Staff:

- i. That the applicant's Minor Boundary Adjustment Annexation be approved by City Council;
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission; and,
- iii. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission.

Shaffer 2nd; motion passed unanimously.

D. V07-19 / Metro Properties (City Gardens) / North Willey Street: Request by Metro Properties (City Gardens) for variance relief from Article 1365.04 (G), *Determining the Number of Spaces Required*, as it relates to exceeding the number of parking spaces in a non-residential zoning district at property located at North Willey Street. Tax Map #01-21 Parcels #73.01-73.02; B-2, a Service-Business District.

Fletcher noted that the variance petition was withdrawn by the applicant.

E. V07-20 / Metro Properties (City Gardens) / North Willey Street: Request by Metro Properties (City Gardens) for variance relief from Article 1367.07 (A), *Bufferyard and Landscaping Requirements*, as it relates to providing a ten-foot landscape buffer between a proposed multi-family use and an existing single-family use at property located at North Willey Street. Tax Map #01-21 Parcels #73.01-73.02; B-2, a Service-Business District.

No public comments were made.

Furfari moved to find in the affirmative for all the Findings of Fact's as submitted by the petitioner; Shaffer 2nd; motion passed unanimously.

Shaffer moved to grant a five-foot variance from the required ten-foot landscape buffer between the proposed multi-family (west building) use and an existing

single-family use as requested with the following conditions recommended by Staff:

- i. That the applicant's Minor Boundary Adjustment Annexation be approved by City Council;
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission;
- iii. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission; and,
- iv. That a Landscape Plan be submitted with the building permit application for review and approval by the Planning Director and include significant landscape plantings that address, to the greatest extent possible, desired buffering between the subject development and the existing contiguous single-family dwelling.

Furfari 2nd; motion passed unanimously.

F. V07-21 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (A) as it relates to orienting building toward Quay Street rather than University Avenue within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

Fletcher read the background and analysis detailed in the Staff Report and described applicant's variance petitions. Fletcher noted that each variance must be review and approved by the Board separately.

Due to technical difficulties, no audio record is available for this meeting. Mr. Scott Krabill, representing the petitioner, made a presentation and public comments in support were made. The Board directed questions to the applicant and staff and discussed the merits of the related variance petitions.

Shaffer moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Furfari 2nd; motion passed unanimously.

Shaffer moved to grant relief from Article 1361.03 (A) to permit the subject structure to front Quay Street rather than University Avenue as requested with the following conditions recommended by Staff:

- i. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission;
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission; and,
- iii. That the architectural design and features illustrated on the submitted rendering of the University Avenue facing façade be developed so as to

create the appearance of a front façade, which is the desired design and development pattern within the subject Sunnyside Overlay District. Any minor changes must be approved by the Planning Director prior to building permit issuance for same. Significant changes, as determined by the Planning Director, may require review by the Board if a variance is necessary.

Furfari 2nd; motion passed unanimously.

G. V07-22 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (Q) (1) as it relates to not dedicating non-residential space on the ground floor within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Furfari moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Shaffer 2nd; motion passed unanimously.

Shaffer moved to grant relief from Article 1361.03 (Q) (1) concerning non-residential use on the ground floor as requested with the following conditions recommended by Staff:

- i. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission; and,
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission.

Furfari 2nd; motion passed unanimously.

H. V07-23 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (Q) (4) as it relates to the exclusion of surface parking lots where two public streets intersect within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Shaffer moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Furfari 2nd; motion passed unanimously.

Shaffer moved to grant relief from Article 1361.03 (Q) (4) for the development of surface parking at corner of University Avenue and Overhill Street as requested with the following conditions recommended by Staff:

- i. That the applicant's variance petition for V07-22 be approved by the Board of Zoning Appeals;

- ii. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission;
- iii. That the applicant's minor subdivision petition be approved by the Planning Commission; and,
- iv. That, to the satisfaction of the City Engineer, the design and construction of the surface parking lot, including related retaining walls, landscape materials, etc., do not obstruct the clear site triangle at the corner of Overhill Street and University Avenue.

Furfari 2nd; motion passed unanimously.

I. V07-24 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (Q) (8) as it relates to minimizing curb cuts along secondary streets within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Shaffer moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Furfari 2nd; motion passed unanimously.

Furfari moved to grant relief from Article 1361.03 (Q) (8) for the development of an excessive curb cut along Quay Street as requested with the following conditions recommended by Staff:

- i. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission;
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission; and,
- iii. That, to the satisfaction of the City Engineer, on-site parking spaces along Quay Street be designed and constructed so that vehicles do not overhang the right-of-way including the required sidewalk.

Shaffer 2nd; motion passed unanimously.

- J. V07-25 / Metro Properties (Glenlock North) / University and Overhill:**
Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (C) as it relates to not orienting buildings with the front facing parking or service areas within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Furfari moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Shaffer 2nd; motion passed unanimously.

Shaffer moved to grant relief from Article 1361.03 (C) so that the subject building could be oriented toward parking and dumpster along Quay Street as requested with the following conditions recommended by Staff:

- i. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission;
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission; and,
- iii. That, to the satisfaction of the City Engineer, the dumpster enclosure along Quay Street be constructed of masonry materials to reduce potential fire vulnerabilities and that said dumpster enclosure include a durable and opaque gate.

Furfari 2nd; motion passed unanimously.

- K. V07-26 / Metro Properties (Glenlock North) / University and Overhill:**
Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (K) as it relates to landscaping land between the front façade of a building and a public street within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Shaffer moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Furfari 2nd; motion passed unanimously.

Furfari moved to grant relief from Article 1361.03 (K) so that the proposed use of land between the front facade of the subject building and Quay Street is not landscaped to integrate with the neighborhood's sidewalk system as requested with the following conditions recommended by Staff:

- i. That the applicant's variance petition for V07-21 be approved by the Board of Zoning Appeals;
- ii. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission; and,

- iii. That the applicant's minor subdivision petition be approved by the Planning Commission.

Shaffer 2nd; motion passed unanimously.

L. V07-27 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (M) as it relates to minimum front yard setbacks on secondary streets within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Shaffer moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Furfari 2nd; motion passed unanimously.

Shaffer moved to grant a three-foot variance from the minimum front yard setback as set forth in Article 1361.03 (M) as requested with the following conditions recommended by Staff:

- i. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission; and,
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission.

Furfari 2nd; motion passed unanimously.

M. V07-28 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1339.04 as it relates to minimum side yard setbacks within the R-3 District on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Furfari moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Shaffer 2nd; motion passed unanimously.

Shaffer moved to grant a 4-foot and a 2.5-foot variance from the minimum side setbacks as set forth in Article 1339.04 as requested with the following conditions recommended by Staff:

- i. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission; and
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission.

Furfari 2nd; motion passed unanimously.

N. V07-29 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (E) as it relates to minimum transparency of ground floor facades that are adjacent to public streets within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Shaffer moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Furfari 2nd; motion passed unanimously.

Furfari moved to grant relief from Article 1361.03 (E) so that less than 60% transparency for the ground floor façade along Overhill Street and Quay Street could be developed as requested with the following conditions recommended by Staff:

- i. That the applicant's variance petition for V07-21 be approved by the Board of Zoning Appeals;
- ii. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission;
- iii. That the applicant's minor subdivision petition be approved by the Planning Commission; and,
- iv. That decorative shutters or similar architectural features are represented in plans submitted for building permits, to the satisfaction of the Planning Director, and be constructed so as to provide context to an otherwise blank wall facing Overhill Street.

Shaffer 2nd; motion passed unanimously.

O. V07-30 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (O) (1) as it relates to minimum fenestration for building facades facing primary streets and/or public open spaces within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Shaffer moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Furfari 2nd; motion passed unanimously.

Furfari moved to grant relief from Article 1361.03 (O) (1) so that less than 50% total fenestration for the entire façade facing University Avenue could be developed as requested with the following conditions recommended by Staff:

- i. That the applicant's variance petitions for V07-21 and V07-22 be approved by the Board of Zoning Appeals;
- ii. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission;
- iii. That the applicant's minor subdivision petition be approved by the Planning Commission; and,
- iv. That the architectural design and features illustrated on the submitted rendering of the University Avenue facing façade, which address Article 1361.03 (O) (3), be developed. Any minor changes must be approved by the Planning Director prior to building permit issuance for same. Significant changes, as determined by the Planning Director, which do not conform to the design and performance standards of Article 1361.03 (O) (3) must be reviewed by the Board if a variance is necessary.

Shaffer 2nd; motion passed unanimously.

P. V07-31 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (O) (6) as it relates to the majority of window openings being recessed from the exterior building wall along the building's primary façade within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Shaffer moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Furfari 2nd; motion passed unanimously.

Furfari moved to grant relief from Article 1361.03 (O) (6) so that recessed windows would not be provided as requested with the following conditions recommended by Staff:

- i. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission; and,
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission.

Shaffer 2nd; motion passed unanimously.

Q. V07-32 / Metro Properties (Glenlock North) / University and Overhill:

Request by Metro Properties (Glenlock North) for variance relief from Article 1361.03 (P) as it relates to building materials within the Sunnyside Overlay Districts on property located at the intersection of University Avenue and Overhill Street. Tax Map #20 Parcels #170, 171, 172; R-3, a Multi-Family Residential District.

No public comments were made.

Furfari moved to find in the affirmative for all Findings of Fact's as presented by the petitioner; Shaffer 2nd; motion passed unanimously.

Shaffer moved to grant relief from Article 1361.03 (P) so that dry-stack imitation stone and "Hardy-Plank" could be used as requested with the following conditions recommended by Staff:

- i. That the applicant's Site Plan for a Development of Significant Impact be approved by the Planning Commission;
- ii. That the applicant's minor subdivision petition be approved by the Planning Commission; and,
- iii. That final exterior cladding materials be submitted with the building permit for review by the Planning Director and that no cement block or split-face cement block may be exposed above grade unless covered with brick, imitation dry-stack stone, or similar material.

Furfari 2nd; motion passed unanimously.

Bossio called for Public Comments.

No Public Comments

Staff Comments: Fletcher noted that the Planning Department will be submitting proposed revisions to the Board's By-laws so that they are in conformance with changes in State Code and the Planning & Zoning Code. The Board's By-laws have not been reviewed or revised for several years.

Meeting adjourned 10:10 PM